In the High Court of Judicature at Madras

Dated: 02.03.2007

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N. PAUL VASANTHAKUMAR

Writ Appeal No.2406 of 2003

1.R. Kali
2.Mrs. Sivakami Ammal ..Appellants

..vs..

1.The Corporation of Madras
rep. By its Commissioner
Madras 3.

2.The Tahsildar
Mylapore, Madras. ..Respondents

Writ Appeal is filed under Clause 15 of the Letters patent against the order of this Court dated 01.07.2003 made in W.P.No.10590 of 1996.

W.P.No 10590 of 1996:- Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, forbearing the respondents and their subordinates, men, agents such as circle officer, overseer Building Inspector, Junior Engineer and other field Staff from demolishing the Structure put up by the petitioners on RS.No. 3342/2 & 3 and comprised in Door No. 8 and 8B, Canal Bank Road, Kaplithottam, Mylapore, Madras, in Croporation Division No. 128.

For appellants : Mr. P. Srinivas

For respondents : Mr. P. Subramanian
Government Advocate for R.2

Mr. G.T. Subramanian for R.1

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM,J.)

The above writ appeal is directed against the order of the learned single Judge dated 01.07.2003 made in W.P.No.10590 of 1996, in and by, which after rejecting the stand of the petitioners, dismissed their writ petition.

2. According to the petitioners/appellants, they are residing in a land in Survey No.3342/2 and 3 from 1954 and after getting licence from the Corporation, they were running tea stall. Further, the Tahsildar, Mylapore has issued No Objection Certificate for getting service connection. However, it is not in dispute that in 1994, due to natural calamity, temporary superstructures erected on the said land had fallen down. When they attempted to put up a permanent structure, the respondents prevented them from putting up such construction. It is further seen from the order of the learned Judge that the respondents filed a counter affidavit stating that the land in question is a Government land and due to natural calamity the temporary structures put up by the petitioners had fallen down. Thereafter, the Government had taken a decision not to allow any temporary structures by way of encroachment in the said Government lands in order to protect the watercourse of Backingham canal. It is seen from the averments in the counter affidavit that the petitioners had their temporary structure on the bank of Backingham canal.

3. It is not in dispute that this Court in many orders directed the Government and Municipal authorities not to permit any one to encroach or use water course. In such circumstances, we are of the view that the decision taken by the Government/Corporation cannot be faulted with. In fact the learned Judge relying on those information and of the admitted factual position that even the temporary structure had been put up only in the bank of Backingham canal and the same cannot be allowed to continue, rightly dismissed the writ petition. We are in agreement with the said conclusion and we do not find any ground for interference. Accordingly, the writ appeal fails and the same is dismissed. No costs.

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Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Commissioner
  Corporation of Madras
  Madras 3.

2.The Tahsildar
  Mylapore, Madras.
+ One cc to M/s G.T. Subramanian Advocate SR 13557
+ One cc to M/s P. Srinivas Advocate sR 12960
+ One cc to The Govt Pleader SR 13102
GK (co)
sg 13/3/07

Writ Appeal No.2406/03

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